




Report to the Auburn City Council

Action Item

5
Agenda Item No.

City Manager Approval

To: Mayor and City Council Members
From: Bernie Schroeder, Director of Public Works 
Date: September 13, 2010
Subject: Auburn Municipal Airport Project – Consultant Agreement with Ivan Karnezis

The Issue

Shall the City authorize a Consultant Agreement with IKAE Consulting Engineer (Ivan Karnezis) for the Auburn Airport Improvement Project Number 3-06-0012-10?

Conclusion and Recommendation

Staff recommends, BY RESOLUTION, authorize the Public Works Director to execute a consultant agreement with IKAE for construction related services associated with the Auburn Airport Improvement Project Number 3-06-0012-10 (Taxiway Lighting and Seal Coat Project) in an amount not to exceed \$14,840.

Background

On August 23, 2010 the City Council awarded contracts for the construction of taxiway lighting and pavement seal coat improvements at the Auburn Airport. This work is scheduled to begin in the middle of September and be completed within approximately five weeks. The funding for this project is through a Federal Aviation Administration Grant which requires qualified individuals with experience in airport related construction to oversee the work. Typical duties include construction inspection, daily work logs, safety monitoring, labor compliance and project final reports. Mr. Karnezis has extensive experience in airport projects and would be used to supplement City Staff with the project construction oversight duties.

Staff is requesting approval of the attached consultant agreement for \$14,840 which will expire on February 1, 2010. Mr. Karnezis is currently under contract with the City as the Airport Manager. These duties would be conducted separately and are not included in the proposed contract.

Alternatives Available to Council; Implications of Alternatives

1. Proceed with Staff Recommendation
2. Do not proceed with staff recommendation
3. Take no action

Fiscal Impact

Consultant Costs would come from the Airport Enterprise Fund and be reimbursed by the FAA under grant no. 3-06-0012-10. The total contract amount is not to exceed \$14,840.

Attachments: Consultant Agreement/Resolution

EXHIBIT A-1
PROFESSIONAL SERVICES AGREEMENT
(City of Auburn /Ivan Karnezis.)

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Auburn a California municipal corporation ("City") and IKAE, an independent contractor ("Consultant").

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant: Construction Related Services Associated with Auburn Airport Improvement Project Number 3-06-0012-10 (Taxiway Lighting & Seal Coat Project).
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

- 3.1 "Scope of Services": Such professional services as are set forth in Consultant's September 2, 2010 proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 "Approved Fee Schedule": Such compensation rates as are set forth in Consultant's September 2, 2010 fee schedule to City attached hereto as Exhibit B and incorporated herein by this reference.
- 3.3 "Commencement Date": September 14, 2010.
- 3.4 "Expiration Date": February 1, 2011.

- 5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of fourteen thousand eight hundred and forty dollars (\$14,840) unless specifically approved in advance and in writing by City.
- 5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.
- 5.3 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. **Ivan Karnezis** shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule and Section 5.1 of this Agreement above.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. City shall not

withhold applicable taxes or other payroll deductions from payments made to Consultant unless otherwise required by law.

- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule nor to claim payment other than in compliance with this Agreement, including Section 5.1 above.

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

8. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

9. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

10. INDEMNIFICATION

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended

by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.

- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the City requests with respect to a claim provide a deposit for the defense of, and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice, expert fees and all other costs and expenses of litigation.
- 10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 are not limited by the provisions of any workers' compensation statute or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and to indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other

person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.

- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies apply to the claim, demand, damage, liability, loss, cost or expense.

11. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
- 11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
 - 11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
 - 11.1.3 Worker's Compensation insurance if and as required by the laws of the State of California.
 - 11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverages that meet all of the requirements of this Agreement.
- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and

effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium(s) thereon at Consultant's expense.

- 11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the policies required by this Agreement are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall file with City's Risk Manager such certificate(s) prior to commencement of work under this Agreement.
- 11.6 Consultant shall provide proof to the City's Risk Manager that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage at least two weeks prior to the expiration of the coverages.
- 11.7 The general liability and automobile policies of insurance required by this Agreement shall contain endorsements naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.8 The insurance provided by Consultant shall be primary to any other coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

12. MUTUAL COOPERATION

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 12.2 If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

13. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

14. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

City of Auburn
1225 Lincoln Way
Auburn CA 95603
Telephone: (530) 823-4211 x144
Facsimile: (530) 823-4216

If to Consultant:

Ivan Karnezis
24592 Oro Valley Road
Auburn, CA 95602
Telephone: (530) 269-1410
Cell: (530) 386-6671

With courtesy copy to:

Michael G. Colantuono, Esq.
Auburn City Attorney
Colantuono & Levin, P.C.
11406 Pleasant Valley Road
Penn Valley, CA 95946-9024
Telephone: (530) 432-7359
Facsimile: (530) 432-7356

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

17. TERMINATION

- 17.1. City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant may terminate this Agreement for any reason on thirty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 17.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

18. GENERAL PROVISIONS

- 18.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 18.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph at the head of which it appears, the section or paragraph, and not such heading, shall govern construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular and vice versa, in any place or places herein in which the context requires such substitution(s).
- 18.4 The waiver by City or Consultant of any breach of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition of this Agreement. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in a writing signed by one authorized to bind the party asserted to have consented to the waiver.
- 18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether or not reduced to judgment, shall be entitled to its reasonable court costs, including any accountants' and attorneys' fees incurred in such action. The venue

for any litigation shall be Placer County, California and Consultant hereby consents to jurisdiction in Placer County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.

- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

"City"
City of Auburn

"Consultant"
IKAE

By _____

By: _____
Ivan Karnezis, Contractor

Date: _____

Date: _____

Attest:

By _____
Deputy City Clerk

Date: _____

Approved as to form:

By _____
Michael G. Colantuono, City Attorney

Date: _____

SCOPE OF WORK FOR FAA A.I.P. PROJECT NO. 3-06-0012-10
RESIDENT ENGINEER SERVICES BY IKAE – Dated 9/2/10

According to the FAA, adequate resident engineering is critical for the effective project management. The Resident Engineer (RE) provides the full-time observation needed during this project, which is specified to be completed within 50 calendar (35 work) days. It is the RE's responsibility to ensure that the Contractor follows his approved quality control plan and performs in accordance with the plans, specifications and sound engineering practice. The RE provides competent and qualified engineering supervision and construction inspection. The RE has the authority to reject both unsatisfactory workmanship and materials. Major responsibilities are to:

1. Monitor performance of the Contractor: inform the Contractor of any work that is in noncompliance; require correction of work that does not meet requirements of plans and specifications; report progress of Contractor's efforts to correct deficiencies; compare progress to the baseline construction schedule submitted at the start of construction; and report serious problems project cost overruns or under runs to the City and the Consultant, Jacobs.
2. Retain the Contractor's Quality Control plan on-site and verify that the Contractor is following it.
3. Ensure testing is performed: determine test locations, coordinate and observe testing and lab work; review results and specify action for failed tests; and retain results on-site for the duration of the project.
4. Interpret plans and specifications.
5. Resolve minor problems.
6. Maintain project records including test reports and certifications, field notebook of materials used, and working drawings to be used for preparing as-built drawings.
7. Review and approve requests for payments to the Contractor.
8. Conduct day-to-day construction inspections.
9. Prepare Construction Progress and Inspection Reports, FAA Form 5370-1, and submit to the FAA-ADO on a weekly basis.
10. Maintain a Resident Engineer's diary on a daily basis to include:
 - a. Date and weather conditions
 - b. Quality and quantity of materials delivered
 - c. Test locations and results,
 - d. Safety problems
 - e. Names of important visitors
 - f. Construction work in progress and location
 - g. Size of Contractor's work force and equipment in use
 - h. Number of hours worked per day for Contractor and subcontractors
 - i. The substance of important conversations with the Contractor about conduct, progress, changes, test results, interpretations of specifications, or other details
11. Maintain up-to-date records on quantities of work performed and quantities of materials in place. Assure that quantity measurements are made in accordance with the contract method of measurement requirements.
12. Ensure Contractor compliance with Federal labor and civil rights requirements and monitor and document actual participation of DBE firms. Periodically review payrolls and, through interviews with Contractor's work force, and determine if correct wages are being paid.
13. Contact Consultant for advice and assistance when needed and when major problems arise.
14. Recommend to Consultant when a change order or supplemental Contractor agreement is required.
15. Issue stop work or resume work orders because of weather or other conditions affecting the quality of work.
16. Attend the preconstruction and the final inspection meetings.

EXHIBIT B

ESTIMATE OF COSTS
FOR FAA A.I.P. PROJECT NO. 3-06-0012-10
RESIDENT ENGINEER SERVICES BY IKAE
Dated 9/02/10

<u>ITEM</u>	<u>HOURS/DAY</u>	<u>DAYS</u>	<u>TOTAL HOURS</u>
Monitor performance	2	35	70
QC review	1	14	14
Ensure testing	1	10	10
Plan review	1	10	10
Problem resolution	1	5	5
Record keeping	0.5	35	17.5
Payment reviews	1	2	2
Daily Inspections	included	35	0
Weekly progress reports	1	7	7
Daily Diary	0.5	35	17.5
Work records	0.5	35	17.5
Payroll review	0.5	7	3.5
Consultation	0.5	7	3.5
Change orders	4	1	4
Meetings	2	2	4

TOTAL HOURS: 185.5

HOURLY RATE: \$80.00

TOTAL ESTIMATE OF FEES: \$14,840

1 RESOLUTION NO. 10-
2 RESOLUTION AUTHORIZING A CONSULTANT AGREEMENT WITH IKAE FOR
3 CONSTRUCTION RELATED SERVICES ASSOCIATED WITH THE AUBURN
4 AIRPORT IMPROVEMENT PROJECT NO. 3-06-0012-10
5 -----

6 THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

7 That the City Council of the City of Auburn does hereby authorize the
8 Director of Public Works to execute a Consultant Agreement with IKAE for
9 construction related services associated with the Auburn Airport Improvement
10 Project No. 3-06-0012-10 in an amount not to exceed \$14,840.

11 A true and correct copy of said contract is attached hereto as Exhibit "A -1."
12

13 DATED: September 13, 2010
14

15 _____
Bridget Powers, Mayor

16 ATTEST:

17 _____
18 Joseph G. R. Labrie, City Clerk
19

20 I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify
21 that the foregoing resolution was duly passed at a regular session meeting of
22 the City Council of the City of Auburn held on the 13th day of September 2010
by the following vote on roll call:

23 Ayes:

24 Noes:

25 Absent:

26 _____
Joseph G. R. Labrie, City Clerk
27
28

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